IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.7547 OF 2005

Shri Anil Umrao Gote ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr.Anil Umrao Gote applicant present in Present.
Raja Thakre & A.M.Chimalkar for respondent-C.B.I.State

CORAM :- R.S.Mohite, J.

DATE :- 6th October,2006.

P.C. :-

1. This is the second application for grant of bail filed by the applicant. The applicant is an accused in C.R.No.135 of 2002 registered by the Bund Garden Police Station Pune, initially for offences under the Indian Penal Code, Prevention of the provisions of the Corruption Act and The Bombay Stamp Act, the scope of which, in the course of the investigation by different authorities has been expanded to include the offences under the Maharashtra

Control of Organized Crime Act, 1999.

2. It may be mentioned here that the applicant had earlier filed an application for bail in this court being Criminal Application No. 3979 of 2004. A Single Judge of this court A.M. Khanwilkar J. by his Judgment and order dated 3rd November 2004, after dealing with points of law and arguments on facts raised before him, was pleased to reject the said bail application by a detailed order.

3. That after the rejection of his bail application, the present applicant filed a Special Leave Petition before the Apex court, but before the said Special Leave Petition could be heard, on 26.07.2005 the C.B.I. to whom the case has been transferred, filed a charge sheet. In the circumstances when the Special Leave Petition filed by the petitioner came up for hearing before the Apex Court on 15.09.2005, the petitioner sought leave to withdraw the petition as he intended to move the High Court afresh. The leave so sought was granted and the Special Leave Petition was dismissed. That it has been submitted by the petitioner that a fresh charge sheet has been filed by the respondents. It was directed that if an the application for bail was filed before the High Court, the same should be considered on merits.

4. After withdrawing the Special Leave Petition before the Apex Court the present second application for grant of bail came to be filed by the applicant in this court on 14.11.2005.

5. Heard both sides at great length on merits and perused the entire record. It was contended by the applicant that in his earlier bail application which was rejected by Khanwilkar J., though he had canvased several points on the basis of the facts of the case, his arguments were not specifically dealt with in the judgment. In this regard my attention was drawn to the observation made by Khanwilkar J. in paragraph 10 of the said Judgment in the following terms.

> " Although lengthy argument was canvassed before me inviting my attention to each document, I have chosen not to elaborate on the said argument in the present Judgment, so as to obviate any prejudice being caused one way or the other, at the trial; because I am presently called upon to consider the limited question as to whether the materials on record would permit proceeding against the Applicant in relation to the alleged offence and is it possible to take the view that there are reasons to believe that the Applicant is not guilty of the alleged offence".

6. It was contended that after the Judgment, an additional charge sheet has been filed by the C.B.I. and therefore, there is a change of circumstances which entitles the applicant to re-apply for bail.

7. As regards the aforesaid submission of the applicant, the special prosecutor contended that the observations made in the Judgment of Khanwilkar J. were made only after he referred to the various contentions raised by the applicant's advocate. That the non-elaboration of all the contentions of the applicant was only made to protect the interest of the applicant and to ensure that no prejudice would be caused to him. He pointed out that though there was no prohibition against the filing of a second bail application, yet the scope of the bail application should only be restricted to any change of circumstances which may have occurred after the first bail application was rejected. His contention was that the though the C.B.I. had filed its chargesheet after the first bail application was rejected, the same did not contain any new material which would amount to a change of circumstances.

8. Hence, I have decided to re-hear the matter on merits particularly in view of the direction of the Apex Court that the application should be considered on merits.

9. On the merits of the case, it was sought to be contended that there was no material to indicate that the present applicant was aiding, abetting, participating, conspiring with the main accused Mr. Abdul Karim Telgi or other accused in the alleged activities of printing and distribution of fake stamps or in any activity distributing of fake stamp papers or in any activities which may amount to organised crime or an offence under the Indian Penal Code or under any special statute. My attention was drawn to several statements including a confessory statement of accused no. 12 Uday Savant who was a private printer engaged by Mr.Telgi, three statements of Suvarna Durve, who was an accountant working in the printing press of Mr.Telgi, three statements of John D'soza who was an employee of the said printing press, three statements of Vilas Chalke who was yet another employee of the printing press started by Mr.Telgi, two statements of Sham Shirke who was also the employee of the printing press of Mr. Telgi, two statements of Reshma Ankaleshwaria who was working as a telephone operator-cum-clerk at the office of Mr.Telgi and who was a Steno of Mr.Telgi from 1998 till 23.03.2001. On the basis of such statements it was sought to be contended that none of those statements indicated that the applicant was actively associated or in any way concerned with the actual

printing of fake stamp papers at Mr. Telgi's printing press or their distribution. It was contended that at the highest these statements shows an acquaintance between the applicant and Mr. Telgi. In this regard the statement of accused no.12 Uday Sawant indicates that he was told to remain present at the Churchgate office of the present applicant, and when he went to Churchgate office of the applicant he was introduced by the applicant to a person named Karimbhai. In this statement it is stated that there was discussion regarding the opening of press. Mr.Telgi informed that a newspaper was to be started by the applicant and for this purpose it was his desire to start an independent printing press. This incident took place in January, 1998. He further states that when the printing press was actually started, Mr. Abdul Karim Telgi was present with the present applicant. The statement of other witnesses also establish the fact that the present applicant knew Abdul Karim Telgi well. Though these statements do not show the actual participation of the applicant in the activities of Mr.Abdul Karim Telgi in printing and distributing fake currency notes, yet they do prima facie indicate a very close of friendship between the applicant and Mr.Telgi.

10. It was sought to be contended that the confessionary statement of accused No. 10 Uday Sawant

was not admissible in evidence as the same was typed. The contention was that under section 18 of the MCOC Act, 1990, the confession has to be recorded by the police officer either in writing or on any mechanical device like cassette or sound tape recorder which can be seen or images can be produced. This contention cannot be accepted in view of the direct judgment of the Apex Court in the case of State of Tamil Nadu V/s. Sivavasan (1997(1) Crimes) 170. It was sought to be contended that there was no evidence to indicate that the present applicant has received any amount from Mr. Abdul Karim Telgi or any of his associates which could be treated as an act of organized crime. This contention cannot be accepted at this stage as the police produced the diary of accused no.6 Khalid. This diary was seized on 15.06.2002 from the Karim Court residence of Mr. Telgi under section 27 of the Indian Evidence Act on a discovery statement of accused no. 26 Salman Tamboli. This diary contains several entries pertaining to the amounts which have been paid to various persons. Amongst the various entries are, entry of Rs. one lakh in the name of Anna dated 25.01.2002, Rs. one lakh in the name of Anil Gote on 01.03.2002, Rs. one lakh in the name of Anil Gote on 19.02.2002, Rs. one thousand and Rs.1 lakh in the name of Anil Gote on 23.3.2002, Rs. five lakh in the name of Anna dated 10.04.2006. It was the prosecution case that Anna was none other than the

present applicant. It was sought to be contended that there was three direct entries in the name of Anil Gote. But, in my view this is the matter which can be decided only on evidence led in trial and not on oral submission across the bar before the evidence is led. Further argument of the defence was that the police case against the present accused was fabricated as the second remand application dated 13.06.2003 talked about the entry in Khalid's diary dated 28.12.2001 and as Khalid's diary was only kept for the period from 04.01.2002 to 02.06.2002. The prosecutor in his argument brought to my notice that on the date of the filing of the second remand application dated 30.06.2003 the police had information about the payment of amount of Rs.1 lakh on 28.02.2002, because a mention about the said payment was found on a computer print out seized under a panchanama dated 11.01.2003. In my view, even if it is accepted that there was an error in the remand application this by itself cannot be a ground for grant of bail or to hold that the entire prosecution case is malafide or false or fabricated .

11. The prosecution brought to my notice that the present applicant was Chairman of Kisan Trust and the applicant was chairman for the period from 8.09.1995 to 30.07.1997. On behalf of the applicant it was sought to be contended that Telgi resigned

voluntarily. It was brought to my notice that though Telgi was not resident of the area of this trust, the address of Telgi was shown as at the residence of the applicant while admitting him in the trust. The case of the applicant that Telgi has infact voluntarily resigned long before the present agreement was registered, and his resignation was accepted on the advise given by Advocate Shri Nitin Pradhan. The police have recorded the statement of various office bearers of the Kisan Trust including Ramesh Varkhe, Treasurer Tathed and several other trustees which prima facie indicates that the record of the Kisan Trust was manipulated to show that Telgi had resigned. The records of Kisan Trust show amount given by prominent persons like Mr. Jethmalani etc., who deny making any such payments..

12. The applicant then contended that approval has not been granted as required under section 23(a) of the MCOC Act 1999.

13. This legal point was also raised before the Khanwilkar J. and by a detailed reasoned order while rejecting the bail application of the applicant, Khanwilkar J. held that the approval granted in the present case would be proper for the reasons mentioned in the said order. It was sought to be contended that this view does not survive any longer in view of the

direction given by the Full Bench of this court in the case of **Ashok Gyanchandra Vohra v/s. State of Maharashtra, reported in 2006 CRI, L.J.1270**, wherein the Full Bench held that the mandatory provision under section 23(a) should be followed. It is noticed that the Division Bench has not dealt with the judgment and order passed by Khanwilkar J . in this very case. In any case, the judgment and order passed by the Full Bench is challenged by filing a Special Leave Petition and special leave has been granted. The contention of the applicant therefore cannot be accepted, particularly as in the Judgment of Full Bench, does not indicate the exact manner of application under section 23(a) of MCOC Act which is dealt with by the Khanwilkar J. while earlier rejecting the bail application of the applicant. The attention of this court was drawn to the Judgments of the Apex court granting bail to other accused in this trial. I find from these judgments that the same are passed on the allegations and merits against the accused in those cases. Some of them are of police officers against whom allegations was of not taking action against Mr. Telgi and / or other accused. The allegations against the present applicant are on a different footing and cannot be said on the same footing as the accused who were granted bail. Under section 21(4) of the MCOC Act, 1999 I have to be satisfied that there is reasonable ground for believing that he was not guilty

of the offences under MCOC Act. In the circumstances the application is rejected.

14. It is once again made abundantly clear that the observations which are made in this order will not in any way prejudice the decision of the trial court which will decide the case on the evidence led during the trial and on appreciation of such evidence.

15. As far as the packets of C.D.’s are concerned which are in sealed condition, the trial court has full discretion for opening the sealed packets of C.D’s according to law at the trial.

16. The copy of this order be sent to the applicant in jail.

(R.S. Mohite, J.)